

1 HIGHLY CONFIDENTIAL - B. McDADE  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555 (JMP)

8 HOLDINGS, INC., et al.,

(Jointly Administered)

9  
10 Debtors.  
11

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12 \* \* \*HIGHLY CONFIDENTIAL\* \* \*

13 DEPOSITION OF BART McDADE

14 New York, New York

15 September 2, 2009  
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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24045

1 HIGHLY CONFIDENTIAL - B. McDADE

2 September 2, 2009

3 9:57 a.m.

4  
5 HIGHLY CONFIDENTIAL deposition  
6 of BART McDADE, held at Jones Day, LLP,  
7 222 East 41st Street, New York,  
8 New York, before Kathy S. Klepfer, a  
9 Registered Professional Reporter,  
10 Registered Merit Reporter, Certified  
11 Realtime Reporter, Certified Livenote  
12 Reporter, and Notary Public of the State  
13 of New York.  
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1                   HIGHLY CONFIDENTIAL - B. McDADE

2       told about changes to the deal?

3           A.     Uh-huh.

4           Q.     In the course of that discussion, do  
5       you recall anything that was told to the masses  
6       about the 15c3 assets?

7           A.     No, I was -- it was a large gathering  
8       around Mr. Miller in a live setting without  
9       microphones, so I wasn't part of the actual  
10      conversation. So the senior lawyers were  
11      gathered in the middle of the courtroom.

12          Q.     And when you say you weren't part of  
13      the conversation, were you able to hear the  
14      conversation?

15          A.     No, that's what I mean. I was not  
16      able to hear the conversation. There was no  
17      microphone. He was not in a position with a  
18      microphone in any public setting. It was a  
19      public setting where, unless you were crowded  
20      around the ring, you couldn't hear.

21          Q.     I see. So there was a meeting where  
22      information was given to the masses, but you  
23      needed to be specifically within the tight  
24      immediate ring in order to actually hear what  
25      was being said?

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2 A. Correct.

3 Q. And you did not hear what was said?

4 A. Yes, sir.

5 Q. When you say "yes, sir"?

6 A. Yes, sir, I did not hear.

7 Q. You had looked a number of times today  
8 at the September 16 balance sheet, Exhibit 19,  
9 and that includes on each side, the assets and  
10 the liabilities, a reference to derivatives.  
11 See that, 4 and a half billion on the asset side  
12 and 4 and a half billion on the liability side?

13 A. Uh-huh.

14 Q. Am I correct that on the asset side  
15 that represents long positions?

16 A. Yes.

17 Q. And on the liability side that  
18 represents short positions?

19 A. Yes.

20 Q. And those are positions in derivatives  
21 that are -- that LBI had?

22 A. Yes, exchange-traded.

23 Q. The exchange-traded, do those include  
24 derivatives that were traded on the Options  
25 Clearing Corporation, or OCC?

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2 A. Yes.

3 Q. Did you understand that, in addition  
4 to the long positions and the short positions  
5 that Lehman had at OCC, it also had additional  
6 cash and assets that were deposited as margin  
7 and also clearing funds deposited at the OCC?

8 A. Yes, I did, but keep in mind the  
9 context that we had had assets like that, for  
10 example, at the CME, and they lost those assets  
11 over the course of the week. So we had no  
12 confidence that those were potentially our  
13 assets given what had been transpiring.

14 Q. Did anyone tell you that you -- that  
15 Lehman had an excess of those assets at OCC?

16 A. Not specifically, no.

17 Q. Do you recall whether at any time  
18 anyone told you that Lehman had an excess of  
19 \$1.3 billion of cash deposited at the OCC?

20 A. No one told me that specifically, no.

21 Q. Did anyone tell you that Lehman had an  
22 excess of \$900 million in additional assets  
23 beyond the cash deposited at the OCC?

24 A. No one told me that.

25 Q. Did you ever have any discussion with

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2 Barclays about Barclays acquiring the \$2.2  
3 billion of excess cash and assets margin at OCC?

4 MR. HUME: Objection. Lacks  
5 foundation.

6 A. I specifically did not.

7 Q. Are you aware whether Barclays ever  
8 asked anyone at Lehman to include any of those  
9 assets in the sale?

10 A. I'm not specifically aware of any  
11 specific dialogue with respect to those options,  
12 the collateral, BarCap and Lehman.

13 Q. And to your knowledge, was there ever  
14 any intent on the part of Lehman to transfer any  
15 of those excess cash, that 1.3 billion or any  
16 additional assets, that was clearing in margin  
17 at OCC to Barclays as part of the sale?

18 A. My recollection is the original  
19 contemplation of those positions would have  
20 been, to your point, the actual positions  
21 themselves. Collateral would have been a  
22 secondary consideration. We were concerned  
23 about our collateral positions.

24 However, I think over the course of  
25 the week, that became -- that became, to my

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2 recollection, over the course of time, that  
3 became something that ended up, I believe, in  
4 the clarifying document.

5 Q. Did anyone tell you that the, under  
6 the clarifying document, there had been some  
7 agreement where Barclays to transfer to Barclays  
8 an additional \$2.2 billion of cash and  
9 securities representing margin, excess margin  
10 and other assets at OCC?

11 A. No.

12 MR. HUME: Objection. Vague and  
13 ambiguous. Lacks foundation.

14 Q. To your knowledge, was there ever any  
15 intent on the part of Lehman that the clarifying  
16 letter would provide Barclays an additional \$2.2  
17 billion in margin at OCC?

18 A. No.

19 Q. What about margin, additional margin  
20 that Lehman had at any other clearing  
21 corporations, and I want to specifically include  
22 any foreign clearing corporations, counterparts  
23 to the OCC, were you aware, was there ever any  
24 negotiations or intent on the part of Lehman to  
25 transfer any such margin, cash or additional

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2 assets, at foreign clearing corporations to  
3 Barclays?

4 A. I'm not aware of those.

5 Q. Were you involved, sir, with any  
6 discussions with the Depository Trust  
7 Corporation, DTC?

8 A. Specifically, no.

9 Q. Were you aware of any concerns at DTC  
10 concerning Lehman's business?

11 A. Yes, absolutely.

12 Q. What were the nature of the concerns  
13 that you heard about that were experienced by  
14 DTC?

15 A. We obviously had a number of  
16 settlements normal course of business, and DTC  
17 had become concerned because JPMorgan apparently  
18 was backing -- was backing away in terms of its  
19 role with us, and DTC essentially told us they  
20 were going to shut down our ability to not only  
21 transact going forward, but to shut down  
22 hundreds of thousands of settlements that were  
23 in process.

24 Q. And how did that threaten the deal  
25 with Barclays?



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2 A. Well, it was the position of -- it was  
3 the position of Barclays that they didn't want  
4 to assume all of those liabilities, and it was  
5 the position of the other protagonists,  
6 regulators and others -- again, this is my  
7 opinion -- that Barclays should be more  
8 forthcoming in terms of assuming some of those  
9 responsibilities. And it was also -- there was  
10 also the confusion of the dispute between  
11 JPMorgan and Barclays that clearly created --  
12 created headache.

13 So how it was going to stop the deal,  
14 it would have become an enormous challenge for  
15 Barclays to buy a set of businesses where all of  
16 the normal course transacting over the course of  
17 the last couple weeks of the core constituent  
18 clients, it would have been a massive brand and  
19 reputational challenge, I believe, for a new  
20 buyer, practically speaking, I think.

21 Q. The uncleared trades were in the many  
22 billions of dollars; is that correct?

23 A. I don't have the exact figure, but I  
24 know they were in the hundreds of thousands of  
25 individual transactions.

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2 Q. And DTC's concern was as to its  
3 exposure --

4 A. Exactly.

5 Q. -- in clearing those trades?

6 A. Exactly.

7 Q. And it wanted Barclays to assume  
8 responsibility for that exposure?

9 A. Exactly. It wanted a letter of credit  
10 and it wanted posted collateral, et cetera.

11 Q. And Barclays did offer some limited  
12 guarantee?

13 A. My understanding is Barclays offered  
14 250 million.

15 Q. And DTC wanted an unlimited guarantee?

16 A. That's correct.

17 Q. Were you involved in any discussions  
18 concerning the pledging of certain residential  
19 mortgage assets to DTC in connection with its  
20 concerns?

21 A. Only at a very -- I have vague  
22 recollection of the process, but I was not  
23 involved specifically, no.

24 Q. What do you recall about it?

25 A. We were trying to find at that point